

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2026 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

GANESH DURGAPRASAD KAHAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2026 of 2004
MS SUBHADRA G PATEL for Petitioner No. 1
MS AC RAVAL, AGP for Respondent No. 1-3
RULE SERVED for Respondent No. 1-2
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CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 27/07/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu
has challenged his detention order dated 24-01-2004, by

which he is detained under PASA as a "bootlegger". Along with the said order, the petitioner is served with the grounds of detention. In the grounds of detention, there is a reference about three criminal cases registered against the petitioner. All these cases are registered under the Bombay Prohibition Act. After considering the statements of witnesses and after considering aforesaid cases, the detaining authority has passed the order of detention, which is impugned in this petition.

2) Ms. Patel, learned advocate for the petitioner submitted that cases registered against the petitioner can be said to be cases of breach of law and order and the same cannot be said to be cases of breach of public order. She has also submitted that the last incident registered against the petitioner is of 26-11-2003, and after a considerable time of about two months the order of detention is passed on 24-01-2004. It is submitted by her that if the activities of the petitioner are so dangerous, it was not necessary for the authority to wait for such a long time for passing the order of detention. It is submitted that even after recording statements of so called witnesses, there is a delay of 15 days in passing the order of detention. Therefore, on the ground of delay, order of detention is required to be quashed and set aside. In this behalf, reference is made to the decision of *Elesh Nandubhai Patel Vs. Commissioner of Police, Ahmedabad City & Others* reported in 1997 (1) G.L.H. 381 wherein this Court has observed in Para 21 as under:-

"21. In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996, i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority has relied on two incidents of 2nd October and 10th October 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appeared to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or

to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash V. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S.Ramamurthy reported in 1993(2) Suppli. SCC 61."

3) Ms.Raval, learned AGP, submitted that the detaining authority has properly explained delay in passing the order of detention and since the petitioner was released on bail on 18th December, 2003, the order of detention is passed on 24th January, 2004 and during the intervening period, the detaining authority has recorded statements of witnesses.

4) However, when there are cases registered against the petitioner, it is not necessary for the detaining authority to wait for two months for passing the order of detention. Considering the aforesaid judgement and considering delay of about two months in passing the order of detention, subjective satisfaction arrived at by the detaining authority is vitiated and the detention order is quashed and set aside.

5) At this stage, Ms.Patel, learned advocate for the petitioner made a voluntary statement that petitioner will not enter Baroda city upto 30th September, 2004. In view of this statement, police authority is directed to monitor whether this statement is complied with or not.

6) For the foregoing reasons, this petition is allowed. The order of detention dated 24-01-2004 is quashed and set aside. The detenu, Ganesh Durgaprasad Kahar is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B.Majmudar, J.)

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